IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1305 OF 1984

M/s. Ashwin Industrial Corp. .....Plffs.
vs.
Globe Steerings Ltd and anr. .....Defnds.

K.H. Modi with Mr. Hatim i/b. N.K. and Sabir for the plffs.

S. Deshmukh i/b. B.K. and Girdharlal for defendant no.2.

CORAM: S.U. KAMDAR, J.

DATE : 3RD AUGUST, 2005.

JUDGMENT :

1. The present suit is filed for the recovery of sum of Rs.1,90,914.14/- with further interest on the principal amount of Rs.1,29,574.18/- at the rate of 18% p.a. till payment and or realization. Some of the material facts of the present case are as under :

2. The plaintiff is the supplier of tools and alloy steels. The plaintiff has been supplying the aforesaid material to the first defendant for carrying on their manufacturing activities. It is the case of the plaintiff that the defendant no.1 was the manufacturers of steel gears and essentially it was manufacturing the same for the second defendant. It is further the case that sometime in or about 1981 the defendant no.1 was in financial difficulties and therefore certain arrangement was arrived at between the defendant no.1 and 2. Pursuant to the said arrangement the defendant no.2 had appointed the employee of the first defendant as the chief executive of the first defendant to manage the affairs and managing the activities of the first defendant. It is further the case of the plaintiff that during the period May 1981 one Mr. A.M. Singhvi was the Chief Executive Officer nominated and or appointed by the second defendant.

3. In or about May 1981 the defendant no.1 asked the plaintiff to supply auto steel for the

manufacture of steel gears. It was informed to the plaintiff that the said material is required for the purpose of manufacturing of the items to be supplied to the second defendant. It is the case of the plaintiff that the defendant no.1 also made representation and assured to the plaintiff that the amount inrespect of the said goods would be payable by the second defendant and that the second defendant has guaranteed the said payment. It is the case of the plaintiff that accordingly in May 1981 a tri-partite arrangement/agreement was arrived at between the plaintiff, the 1st Defendant and the 2nd defendant therein. It is the case of the plaintiff that under the said arrangement the defendant no.2 undertook the liability to make payment for the supply of the said material by the plaintiff to the defendant no.1. It is further the case of the plaintiffthat in pursuant to the said arrangement a rubber stamp was placed on the purchase order interalia specifying therein that the defendant no.2 would be liable to make payment of the aforesaid amount. Thus according to the plaintiff they are entitled to the aforesaid

payment from the 2nd defendant as guarantors of the said payment.

4. It is the case of the plaintiff that in pursuance to the said arrangement the plaintiff has supplied the goods from time to time to the defendant under 23 bills. It is his case that during the period 14.5.1981 to 16.9.1981 the plaintiff supplied to the first defendant the goods under 23 bills and inrespect thereof the defendant no.1 has issued 14 purchase orders. It is the case of the plaintiff that out of the said 14 purchase orders inrespect of 6 orders the plaintiff has received the amount in the name of the plaintiff by a demand draft. According to the plainiffs these payments were made by the defendant no.2 pursuant to the said guarantee and before sending the said payment the defendant no.2 has addressed a letter to the plaintiff referring to the said purchase order placed by the defendant no.1 and acknowledging that the said material was required for production of steering gears for the use of the second defendant. It is the case of the plaintiff

that in respect of the balance eight purchase orders the defendant no.1 and 2 has failed to make payments and thus according to the plaintiff under the said eight purchase orders which covers 10 bills there is an outstanding amount due and payable by the defendants to the plaintiffs for sum of Rs.1,29,574.81/-.

5. Inrespect of the aforesaid recoveries the present suit has been filed. The suit as against the defendant no.1 has already been decreed and thus suit is only tried as against the second defendant. Issues were farmed on 27.6.2005 which are as under :

1.Whether the plaintiffs prove that defendant no.2 is liable for the sum claimed as guarantee inrespect thereto ?

2. Reliefs if any ?

6. The learned counsel appearing for the plaintiff has tendered various documents in the course of the evidence. The said documents are

taken on record as Ex.P.7 to P.55. He has also produced the documents which are taken on record being Ex.P.56,57 and 58. The documents which are produced alongwith the compilation being Ex.P.1 to P.8 are also taken on record. The learned counsel has also led the oral evidence of Ashwin Nandlal Mehta and has filed the affidavit dated 11.7.2005. The said witness was cross examined by the second defendant. In the present case the issues were farmed as between the plaintiff and defendant no.2 essentially to ascertain whether the defendant no.2 is liable as a guarantor.

7. The learned counsel for the plaintiff has contended that the defendant no.2 is liable to make payment for the supplies effected by the plaintiff to the defendant no.2 as guarantor. Insupport of his contention he has relied upon the rubber stamp which has been placed on the purchase orders. He has also further contended that from the correspondence it is clear that the second defendant had guaranteed the payment of the amount

covered inrespect of some of the purchase orders and the bills towards the supply of the material by the plaintiff no.1 to the defendant no.1. He has further contended that infact A.M. Singhvi who was the Chief Executive Officer of the defendant no.1 was an employee of the second defendant and subsequently after the strike in the first defendant company the said person is employed by the second defendant in their organisation. The learned counsel has relied upon the letters which are produced in the course of the evidenced by the plaintiff which inter-alia contains a letter in which the defendant no.2 has made payments inrespect of the six purchase orders. The learned counsel has therefore contended that in the light of the fact that the defendant no.2 has addressed a letter and infact made payment inresepct of the eight purchase orders it should be treated that the defendant no.2 is liable to make payment towards balance of six purchase orders also which is the subject matter of the present suit.

8. On the other hand the learned counsel for the

defendant has contended that there is no guarantee given by the second defendant. There is no document or a letter or any evidence to indicate that any such guarantee was given. He has further contended that the contract of guarantee cannot be established by implication or by inference. He has also contended that the in the cross examination the plaintiff has admitted that the purchase orders are issued by the defendant no.1. It is also admitted that the rubber stamp is put by the first defendant and that also subsequent to the supply of the goods. Thus the contention that the defendant no.2 is a guarantor merely by virtue of rubber stamp on the purchase order put by the first defendant should not be accepted. In his view the liabilities in respect of the suit claim cannot be fastened to the second defendant on such a insufficient evidence.

9. I have perused the record particularly the documentary evidence which has produced before me. The documents are in the form of purchase order, invoices, challans addressed by the plaintiff to

defendant no.1. There is no document any nature whatsoever indicating any contract of guarantee by the 2nd defendant. Merely a rubber stamp on purchase order is relied upon. Admittedly the said purchase order is not signed by the 2nd defendant. On the oral evidence it has been established that the rubber stamp was put by the first defendant and that also subsequent to the supply of the material by the plaintiff. It is an admitted position before me that there is no contract of guarantee in writing between the plaintiff and the first defendant. The witness of the plaintiff in his oral examination in chief as well as in his cross examination sought to put forward an oral contract of guarantee. Apart from the fact that he has miserably failed to establish any such contract or give any details of any such contract of guarantee entered into between plaintiffs, defendant no.1 and defendant no.2. On the contrary he has stated in his evidence that it is the first defendant who assured him that the said guarantee is given by the second defendant. The evidence is totally hopeless and without any merits. In law a contract of

guarantee cannot be established by merely an evidence that the defendant no.1 stated that there is such an guarantee given by the second defendant. In my view the plaintiff has failed to establish any such contract of guarantee by the second defendant. The reliance placed by the plaintiff on the letters issued by the second defendant is also of no merits. The letter specifically states that there are paying money towards a particular purchase order and because the said goods have been supplied to them by the first defendant. Merely from the said fact it is not possible to infer that even inrespect of other six outstanding purchase orders the second defendant has taken over the liability to pay the price thereof as guarantor or that there is any contract of guarantee given by the 2nd defendant. The contract of guarantee as it is well settled must be strictly construed on the terms and conditions thereof. I do not find any such terms and conditions of such guarantee either in oral nor in writing. The evidence of the plaintiff in this behalf is highly unsatisfactory and unreliable. On one hand he states that A.M.

Singhvi was the Chief Executive Officer of the defendant no.1 and on the other hand he deposed that the said officer was the employee of the second defendant. It is not possible to accept the said evidence. Because one person cannot be in employment of two companies and that also of two public limited companies being seperate legal entity. therefore the evidence led in support of the so called claim of guarantee cannot be accepted. In my opinion the plaintiff has failed to establish that the second defendant is liable to make payment as a guarantor inrespect of the supply effected by the plaintiff to the first defendant. I am also unable to hold from the evidence on record that there is an oral contract of guarantee or any tri-partitie arrangement arrived at inrespect of the so called guarantee given by the second defendant. In the aforesaid circumstances, I pass the following order :

Suit as against the second defendant

dismissed. However there shall be no order as to costs.

sd/-

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